U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10856946

Date: JUNE 9, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a materials scientist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.[1]

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

[1] In the decision, the Director stated that "[a]fter the [P]etitioner has established . . . eligibility for second preference classification under section 203(b)(2)(A) of the [Act], [U.S. Citizenship and Immigration Services (USCIS)] may grant a national interest waiver if the [P]etitioner demonstrates by a preponderance of the evidence that [the three prongs of the *Dhanasar* framework have been satisfied]." The Director then conducted an analysis of the *Dhanasar* prongs without concluding whether the Petitioner established eligibility for second preference classification. However, in a request for evidence (RFE), the Director noted that the record established the Petitioner "was granted a PhD in Materials Science and Engineering from the University [redacted] [which] establishes that the [Petitioner] qualifies for the classification with an advanced degree."

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[2] *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing

[2] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, would be in the national interest. Specifically, the Director concluded that the Petitioner satisfied the first two prongs of the *Dhanasar* framework but the record did not "establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification."

We disagree that the record establishes that the proposed endeavor has national importance, as required by the first *Dhanasar* prong. *See Dhanasar*, 26 I&N Dec. at 889. Furthermore, we note that the Director's analysis of the third *Dhanasar* prong does not support the conclusion that the proposed endeavor has national importance. Accordingly, we withdraw the Director's finding that the evidence establishes that the proposed endeavor has national importance as contemplated by *Dhanasar*.

The Petitioner initially described the proposed endeavor as [redacted] He further stated that he "proposes to continue his research on novel organic semiconductor materials." In response to the Director's RFE, the Petitioner elaborated as follows:

> At [redacted] I am continuing my career in the [redacted] display industry. As a Technical Program Manager, my key responsibilities include managing the [redacted] application project, both internally and at a key customer site, in order to enable and optimize [redacted] mass production processes.
>
> . . .
>
> At [redacted] I use my expertise in materials science and [redacted] from my background to support the development of the company's [redacted] technology. My success in my research and work here will not only help [redacted] gain a significant share of this fast-growing and highly competitive market in the near future, but also ensure that the United States will retain its foothold in this area against other international competitors. Moreover [redacted] has already expanded its U.S. manufacturing sites and will continue to do so in order to meet the demand of the market, thereby creating a significant number of jobs in the United States in the near future.

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. *Dhanasar* provided examples of endeavors that may have national importance, as required by the first prong, such as "certain improved manufacturing processes or medical advances [resulting in] national or even global implications within a particular field" and endeavors that "have significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area." *Dhanasar*, 26 I&N Dec. at 889-90.

Despite concluding in the decision that "[t]he evidence does establish that the [P]etitioner's proposed endeavor has . . . national importance," when analyzing the third *Dhanasar* prong the Director stated that "[the proposed] endeavor is just part of the whole process of [redacted] [production] and does not prove that it is urgent for the nation as a whole. USCIS will agree there is an urgency for your company to get the product produced, but not urgent enough, on a national interest, to forgo the [l]abor certification process." The Director further stated that, although the Petitioner's employer "may be producing jobs, the record lacks evidence to show that the [P]etitioner's endeavor will directly lead to the creation of jobs." As noted above, these observations do not support the conclusion that the proposed endeavor has national importance, as required by the first *Dhanasar* prong.

On appeal, the Petitioner reasserts, as he did in response to the Director's RFE, that his "considerable expertise supports [redacted]'s [redacted] technology development, thus aiding [redacted]—and in turn, the United States—in gaining a substantial share of this fast-growing, competitive market." He also reasserts that he is "an important researcher to the creation of . . . [redacted] technology at [redacted] . . . in the U.S. and the subsequent creation of jobs to which it leads." The Petitioner further asserts that, because [redacted] technology . . . is widely used in smartphones and virtual reality headset displays" and "[l]eading American technology companies such as [redacted] rely on this technology to aid their digital systems," the proposed endeavor's "focus[] on enhancing the performance of [redacted] technology . . . underscores the national importance and substantial merit of [the Petitioner's] work to the U.S. hi-tech industry."

The record does not establish that the Petitioner's proposed endeavor of project management, [redacted] production process optimization, and [redacted] technology development entail "certain improved manufacturing processes [resulting in] national or even global implications in the fields of [redacted] production or [redacted] *See Dhanasar*, 26 I&N Dec. at 889. Although the Petitioner may improve his employer's [redacted] production manufacturing process, the record does not establish how that process improvement will be proportionate to "national or even global implications." *See id.* Moreover, that the Petitioner's employer may gain a share of the market of [redacted] technology through the proposed endeavor does not necessarily establish that, "in turn, the United States" would gain a substantial share of that market.

Although the Petitioner asserts that his research leads to the creation of jobs for his employer, the record does not establish the particular number of jobs his research has created in the past, or the anticipated number of jobs the proposed endeavor would create for his employer. The Petitioner also

does not assert that the area in which the jobs may be created is economically depressed.[4] Accordingly, the record does not establish that the proposed endeavor has significant potential to employ U.S. workers, particularly in an economically depressed area, that rises to the level of national importance as contemplated by *Dhanasar*.[5] *See id.* at 889-90.

Additionally, the Petitioner's observation that "[l]eading American technology companies such as [redacted] rely on" the type of technology he would research for his employer does not establish how the proposed endeavor would entail certain improved manufacturing processes or advances resulting in national or even global implications within the field of [redacted] technology development, or have substantial positive economic effects, particularly in an economically depressed area. *See id.* at 889-90. Again, the focus of the first prong is on the specific endeavor, not the importance of the industry, field, or profession in which the individual will work. *See id.* at 889.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore is not eligible for a national interest waiver.[6] We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

[4] The record establishes that the Petitioner's employer is located in [redacted] California.

[5] We further take administrative notice that publicly available information filed with the State of California under the Worker Adjustment and Retraining Notification (WARN) Act, Cal. Lab. Code §§ 1400-1408, requiring employers to provide a 60-day notice prior to conducting a mass layoff of employees, indicates that the Petitioner's employer reduced its workforce by 144 workers at the beginning of 2020, one year after the petition filing date. State of California, Employment Development Department, Worker Adjustment and Retraining, *WARN Report – Summary by Received Date 07/01/2019-06/30/2020 State Fiscal Year*, available at: https://edd.ca.gov/Jobs_and_Training/warn/WARN-Report-for-7-1-2019-to-6-30-2020.pdf. The record does not indicate whether the Petitioner's research lead to the creation of jobs despite the Petitioner's employer reducing its workforce by 144 workers.

[6] Because we conclude that the record does not satisfy the first *Dhanasar* prong, which is dispositive, we need not address the Petitioner's further assertions on appeal regarding the third prong.